

**REMARKS****Status of Claims**

Claims 1, 4-9, 12-13, 18-19, and 76 are pending after entry of this paper. Claims 2-3, 10-11, 14-17, and 20-75 have been cancelled without prejudice. Applicants reserve the right to pursue cancelled claims in at least one continuing application.

Claim 1 has been amended to include the phrase "and wherein the cationic peptide immunogen:CpG oligonucleotide charge ratio ranges from 8:1 to 1:2". No new matter has been introduced with this amendment. Support can be found throughout the specification as filed, for example in paragraphs [0082], [0137]-[0142], and Table 3.

Claim 76 has been added as a new claim. No new matter has been introduced with this amendment. Support can be found throughout the specification as filed, for example in paragraph [0144].

Applicants respectfully request reconsideration and withdrawal of the pending rejections in view of the above-mentioned claim amendment.

**Claim rejections – 35 U.S.C. § 103(a)**

The Examiner has maintained the rejection to claims 1, 5, 7-9, 12-13, and 18-19 under 35 U.S.C. § 103(a) for allegedly being unpatentable over Kreig (WO01/22972) in view of Ladd (WO94/25060) (Examiner's Answer 7/23/2008, page 5-8). The Board of Patent Appeals and Interferences (BPAI) affirmed this rejection. Applicants respectfully disagree.

However, in order to further prosecution without disclaimer of or prejudice to the subject matter of the instant application, applicants have amended claim 1 to indicate that the cationic peptide immunogen:CpG oligonucleotide charge ratio ranges from 8:1 to 1:2.

The Examiner has admitted that Krieg does not teach a cationic peptide (Examiner's Answer 7/23/2008, page 17). The Examiner also indicates that Ladd does not teach the CpG oligonucleotide of the instant claims (Examiner's Answer 7/23/2008, page 18). Furthermore, the BPAI has admitted that "neither of the references states that either of the two agents should be complexed with other agents" (BPAI decision page 14).

Applicants assert that neither Krieg nor Ladd, alone or in combination, teach or suggest each and every element of the instant claims. Moreover, applicants assert that it would not be obvious to arrive at the instant claims based on the teachings of Krieg and Ladd. Specifically, applicants maintain that neither Krieg nor Ladd teach or suggest an immunostimulatory microparticulate complex containing a CpG oligonucleotide and a cationic peptide. Furthermore, applicants assert that neither Krieg nor Ladd teach or suggest an immunostimulatory microparticulate complex wherein the cationic peptide immunogen:CpG oligonucleotide has any particular charge ratio, let alone a charge ratio between 8:1 to 1:2, as required by the instant claims. In particular, neither reference provides any guidance with regard to the charge ratio of a cationic peptide immunogen to CpG oligonucleotide in a microparticulate complex. Applicants further assert that it would not be obvious to a person of skill in the art to create a microparticulate complex comprising a cationic peptide and a CpG oligonucleotide

wherein the charge ratio is between 8:1 to 1:2 based on Krieg and/or Ladd. Therefore, the cited references do not render the instant claims obvious.

Applicants assert that neither Krieg nor Ladd, alone or in combination, teach or suggest each and every element of the instant claims. Accordingly, applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejections to the claims.

The Examiner has also rejected claims 1, 4, and 6 under 35 U.S.C. § 103(a) for allegedly being unpatentable over Kreig (WO01/22972) in view of Ladd (WO94/25060) (Examiner's Answer 7/23/2008, page 8). The Board of Patent Appeals and Interferences (BPAI) affirmed this rejection. Applicants respectfully disagree.

Applicants assert that for at least the reasons set forth above, neither Krieg nor Ladd, alone or in combination, teach or suggest a immunostimulatory microparticulate complex containing a cationic peptide immunogen:CpG oligonucleotide which has any particular charge ratio, let alone a charge ratio between 8:1 to 1:2, as required by the instant claims. Therefore, applicants respectfully request reconsideration and withdrawal of the rejection to these claims.

### **Dependent Claims**

Applicant has not independently addressed all of the rejections of the dependent claims. The applicant submits that for at least similar reasons as to why independent claims, from which all of the dependent claims depend, are allowable as discussed above, the dependent claims are also allowable. Applicant, however, reserves the right to address any individual rejections of the dependent claims and

present independent bases for allowance for the dependent claims should such be necessary or appropriate.

### **CONCLUSION**

Based on the foregoing amendments and remarks, applicant respectfully requests reconsideration and withdrawal of the rejection of claims and allowance of this application.

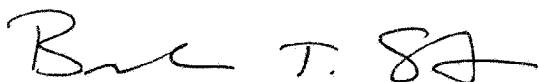
### **AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. **504827**, Order No. 1004263.156US.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. **504827**, Order No. 1004263.156US.

Respectfully submitted,  
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By:



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